

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Time Warner Cable Inc.)	MB Docket No. 12-276, CSR 8712-E
)	
Petition for Determination of Effective)	
Competition in Three Kentucky Franchise Areas)	

MEMORANDUM OPINION AND ORDER

Adopted: June 14, 2013

Released: June 19, 2013

By the Senior Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION AND BACKGROUND

1. Time Warner Cable Inc., hereinafter referred to as “Petitioner,” has filed with the Commission a petition pursuant to Sections 76.7, 76.905(b)(1) and 76.907 of the Commission’s rules for a determination that Petitioner is subject to effective competition in those communities listed on Attachment A and hereinafter referred to as “Communities.” Petitioner alleges that its cable system serving the Communities is subject to effective competition pursuant to Section 623(l)(1)(A) of the Communications Act of 1934, as amended (“Communications Act”),¹ and the Commission’s implementing rules,² and is therefore exempt from cable rate regulation in the Communities because Petitioner serves fewer than 30 percent of the households in the franchise areas. The petition is unopposed.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,³ as that term is defined by Section 623(l) of the Communications Act and Section 76.905 of the Commission’s rules.⁴ The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.⁵ For the reasons set forth below, we grant the petition based on our finding that Petitioner is subject to effective competition in the Communities listed on Attachment A.

II. DISCUSSION

3. Section 623(l)(1)(A) of the Communications Act provides that a cable operator is subject to effective competition if the Petitioner serves fewer than 30 percent of the households in the franchise area. This test is referred to as the “low penetration” test.⁶ Petitioner alleges that it is subject to effective competition under the low penetration effective competition test because it serves less than 30 percent of the households in the franchise areas.

¹ See 47 U.S.C. § 543(l)(1)(A).

² 47 C.F.R. § 76.905(b)(1).

³ 47 C.F.R. § 76.906.

⁴ See 47 U.S.C. § 543(l); 47 C.F.R. § 76.905.

⁵ See 47 C.F.R. §§ 76.906-907(b).

⁶ 47 U.S.C. § 543(l)(1)(A).

4. Based upon the subscriber penetration level calculated by Petitioner, as reflected in Attachment A, we find that Petitioner has demonstrated the percentage of households subscribing to its cable service is less than 30 percent of the households in the Communities. Therefore, the low penetration test is satisfied as to the Communities.

III. ORDERING CLAUSES

5. Accordingly, **IT IS ORDERED** that the petition for a determination of effective competition filed in the captioned proceeding by Time Warner Cable Inc. **IS GRANTED**.

6. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service rates granted to any of the Communities set forth on Attachment A **IS REVOKED**.

7. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.⁷

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Senior Deputy Chief, Policy Division, Media Bureau

⁷ 47 C.F.R. § 0.283.

ATTACHMENT A

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COMMUNITIES SERVED BY TIME WARNER CABLE INC.

Communities	CUID	Franchise Area Households	Cable Subscribers	Penetration Percentage
Breathitt County (Uninc.)	KY0046	4,528	4	0.09%
Knott County (Uninc.)	KY0755	5,929	188	3.17%
Perry County (Uninc.)	KY0033	9,222	1,050	11.39%